

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
HELENA DIVISION**

ALVIS T. MILLER
REG. #11823-042

PLAINTIFF

V.

NO: 2:06CV00181 JLH/HDY

HARVEY LAPPIN *et al.*

DEFENDANTS

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Court Judge J. Leon Holmes. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than eleven (11) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence proffered at the hearing before the District Judge (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.

3. The detail of any testimony desired to be introduced at the hearing before the District Judge in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the hearing before the District Judge.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite 402
Little Rock, AR 72201-3325

DISPOSITION

Plaintiff filed this complaint (docket entry #1), on August 21, 2006, alleging that he was denied medical treatment for a knee injury, and that his blood pressure medication was taken from him, which resulted in elevated blood pressure readings. On September 21, 2006, Plaintiff filed a motion for injunctive relief (docket entry #7). On December 28, 2006, this Court entered an order directing Plaintiff to file a brief in support of his motion, no later than 20 days after the entry of the order, which set forth specifics of when Plaintiff’s medications had been denied, and the injuries he is alleged to have suffered as a result. More than 30 days has now passed, and Plaintiff has not filed the brief, or otherwise responded to the Court’s order. The Court notes that mail sent to Plaintiff at his address on file in the Clerk’s office been returned as undeliverable, with at least one returned envelope indicating that he was no longer confined at the institution (docket entries #19 & #25). Under these circumstances, the Court concludes that Plaintiff’s complaint should be dismissed without prejudice for failure to comply with Local Rule 5.5(c)(2). *See Miller v. Benson*, 51 F.3d 166,

168 (8th Cir. 1995) (District courts have inherent power to dismiss *sua sponte* a case for failure to prosecute, and exercise of that power is reviewed for abuse of discretion).

IT IS THEREFORE RECOMMENDED THAT:

1. Plaintiff's complaint (docket entry #1) be DISMISSED WITHOUT PREJUDICE for failure to comply with Local Rule 5.5(c)(2).
2. All pending motions be DENIED AS MOOT.
3. The Court certify that an *in forma pauperis* appeal taken from the order and judgment dismissing this action be considered frivolous and not in good faith.

DATED this 30 day of January, 2007.



UNITED STATES MAGISTRATE JUDGE